Supreme Court, U.S.
FILED
AUG 29 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-23

In The

Supreme Court of the United States

October Term, 1988

DR. WAYNE SMITH,

Petitioner,

v.

CLEBURNE COUNTY HOSPITAL, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

MICHAEL E. HALE
(Counsel of Record)
GAIL K. PONDER
BARBER, MCCASKILL, AMSLER, JONES & HALE, P.A.
1200 Union National Plaza
124 West Capitol Avenue
Little Rock, AR 72201
(501) 372-6175

Attorneys for Respondent, Cleburne County Hospital

WALTER A. PAULSON II
(Counsel of Record)
FRIDAY, ELDREDGE & CLARK
2000 First Commercial Building
Little Rock, Arkansas 72201
(501) 376-2011

Attorneys for Respondents Physicians

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the Eighth Circuit Court of Appeals correctly applied the proper standard of review in reversing the District Court Opinion that Dr. Smith's Hospital staff privileges were constructively revoked in retaliation for exercise of First Amendment rights, where the appellate court did not specifically mention that it applied the clearly erroneous standard to factual findings and where the court held as a matter of law that Dr. Smith's speech activities were beyond the scope of constitutional protection.

TABLE OF CONTENTS

Page

I. Question Presented for Review i

II. Table of Contents ii

III. Table of Authorities iii

IV. Statement of the Case 1

V. Reason for Denying the Writ 5

VI. Conclusion 13

TABLE OF AUTHORITIES

Page

CASES

Anderson v. City of Bessemer City, N.C., 470 U.S. 564,573 (1985) 8

Bose Corp. v. Consumers Union of U. S. Inc., 466 U.S. 485,499 (1984) 12

Connick v. Myers, 461 U.S. 138,148 (1983) 6, 11, 12

Cox v. Dardanelle Public School Dist., 790 F.2d 668,675 (8th Cir. 1968) 11

Davis v. West Community Hosp., 755 F.2d 455 (5th Cir. 1985) 6

Garner v. Wal-Mart Stores, Inc., 807 F.2d 1536 (11th Cir. 1987) 8

Johnson v. Bunny Bread Co., 646 F.2d 1250 (8th Cir. 1986) 10

Jurgensen v. Fairfax County, Va., 745 F.2d 868 (4th Cir. 1984) 6

Lewis v. Harrison School Dist. No. 1, 805 F.2d 310,313 (8th Cir. 1986) 12

Mt. Healthy City School Dist. Board of Education v. Doyle, 429 U.S. 274 (1977) 6, 11

Patkus v. Sangamon-Cass Consortium, 769 F.2d 1251 (7th Cir. 1985) 6

Pickering v. Board of Education, 391 U.S. 563 (1968) 6, 11, 12, 13

Roberts v. Van Buren Public Schools, 773 F.2d 949,954 (8th Cir. 1985) 11

TABLE OF AUTHORITIES

Page

Satterwhite v. Smith, 744 F.2d 1380 (9th Cir. 1984) 6

United States v. United States Gypsum Co., 333 U.S. 364 (1948) 8

Yates v. Avco Corp., 819 F.2d 630 (6th Cir. 1987) 8

OTHER RESOURCES

Rule 52(a), Fed.R.Civ.P. 5, 7, 8

STATEMENT OF THE CASE

Dr. Wayne Smith, a general practice physician, first submitted written application and was accepted on the medical staff of Cleburne County Hospital (Hospital) in 1968. Hospital by-laws provided that the medical staff each year was to submit recommendations to the Hospital Board of Governors as to which physicians, upon submission of written application, should be accepted onto or remain on the medical staff. Membership on the Hospital medical staff, while permitting the physician to admit patients to the Hospital, carried certain responsibilities such as attending monthly staff meetings and providing rotating coverage for the Hospital emergency room.

By the mid 1970's, Dr. Smith had become dissatisfied with the level of care provided by the Hospital and voiced numerous complaints about the way the Hospital was operated by both the administration and the medical and nursing staff. In July 1986, Dr. Smith informed the Hospital Administrator of his intent to resign from the staff and began so informing his patients as well. Dr. Smith drastically reduced his admissions to the Hospital. On November 22, 1976, Dr. Smith wrote the Hospital Board of Governors requesting an investigation of the Hospital and stated he should no longer remain on the staff if such investigation did not bear out his complaints and instead showed him to be the problem. (PX 76) On that same date, Dr. Smith distributed an open letter to his patients complaining of patient care and the operation of the Hospital and indicating his intent to quit using the Hospital and to resign from the staff. (PX 75) On December 20, 1976, the Hospital Board, largely in response to

Dr. Smith's criticisms and public debate, made arrangements for the Arkansas Department of Health to undertake an inspection and evaluation of the Hospital facilities and quality of care. Shortly thereafter, members of the medical staff took out an advertisement in the local newspaper supporting the Hospital and quality of care it provided. Debate concerning the Hospital and Dr. Smith's complaints received wide press coverage and discussion at public forums. During this time period, Dr. Smith was also issuing some rather biting personal attacks against the Hospital Administrator, Board of Governors, and fellow members of the medical staff, both publicly and privately. At the January 3, 1977 medical staff meeting, Dr. Smith indicated he would not be satisfied with an Arkansas Department of Health investigation and that if such investigation found the Hospital provided adequate care, he would be unable to live with his conscience and would resign. (PX 100) The Arkansas Department of Health completed its investigation and submitted the results on February 1, 1977. (PX 108,109) The report noted some deficiencies; Dr. Smith felt the report indicated the Hospital was providing poor care; other physicians felt it was a basically good report. Dr. Smith announced his candidacy for county judge on February 9, 1977 with a platform critical of the Hospital administration and care provided.

At the February 22, 1977 medical staff meeting, a meeting Dr. Smith chose not to attend, the medical staff passed a resolution *recommending* to the Hospital Board of Governors that the Board *temporarily suspend* Dr. Smith's staff privileges since the medical staff felt the Arkansas Department of Health investigation did not support

Smith's claims of improper patient care. (That resolution, PX 126, is attached as Appendix A.) Dr. Smith responded by writing the Hospital Administrator on February 25, 1977 that in light of the medical staff allegations, he had "no choice but to cease hospital activity" until the matter was resolved. (PX 128) The Administrator responded by letter indicating he understood Dr. Smith's letter to be a letter of resignation which he would pass on to the Board. (PX 134) Dr. Smith replied with a letter that same day indicating he had not resigned from the active medical staff. (PX 135) Consequently on March 17, 1977, the Administrator wrote Dr. Smith that the Board considered him to be an active member of the medical staff and reminded him of his obligations to retain that privilege, including emergency room coverage. (PX 138) Dr. Smith responded by letter dated March 18, 1977 that, on advice of counsel, he would not be "actively participating in hospital activities for some time." (PX 139) On March 24, 1977, the Joint Committee which had been appointed by the Board of Governors to look into the controversy acted on the medical staff recommendation by requesting the Professional Relations Committee of the Arkansas Medical Society to investigate the situation. That Arkansas Medical Society committee investigated for a period of time and determined the controversy was a personality conflict and the committee ceased its investigation.

Dr. Smith did not accept further coverage assignments or attend further staff meetings following the medical staff recommendation. After Dr. Smith missed more than four staff meetings, he was taken off the medical staff in accordance with staff by-laws. Dr. Smith was

provided forms necessary to complete his yearly application for renewed staff privileges which were due back by August 20, 1977. All doctors desiring staff privileges were required each year to reapply. Dr. Smith failed to respond, nor did he participate in further Hospital activities.

The next formal activity was a hearing by a Joint Executive Committee of the Hospital in October 1981 at the direction of the District Court on the issue of whether Dr. Smith should be granted renewed staff privileges. The committee heard testimony and determined Dr. Smith should not be granted privileges based on its belief that Dr. Smith's return would be detrimental to the Hospital and the care it provided. The Board accepted the recommendation that Dr. Smith's staff privileges not be renewed.

Trial of this matter was bifurcated by the District Court. Upon completion of the liability phase, the court concluded Dr. Smith's privileges were constructively revoked in retaliation for his exercise of First Amendment rights by the medical staff action in February 1977 and the Board action in November 1981. Following the remedy phase of trial, Dr. Smith was awarded compensatory damages of $15,000.00 for mental anguish, and punitive damages were assessed against individual defendants. Additionally, reinstatement was ordered upon a showing that Dr. Smith met objective criteria for participating on the medical staff. The Eighth Circuit Court of Appeals reversed the liability decision, holding that Dr. Smith voluntarily resigned from the medical staff and that his speech fell outside the scope of constitutionally protected activity.

REASON FOR DENYING THE WRIT

The Eighth Circuit Court of Appeals applied the proper standard of review in reversing the Opinion of the District Court that Dr. Smith's staff privileges were constructively revoked in retaliation for exercise of First Amendment rights. On the issue of constructive revocation, the Court of Appeals, without specifically citing Rule 52 of the Federal Rules of Civil Procedure or the clearly erroneous standard, made it abundantly clear that from a review of the record, it was convinced that a mistake had been made by the District Court in its factual findings and conclusions. The appellate court referred to specific factual matters, either ignored or not given appropriate consideration by the District Court, which made it unmistakably clear that Dr. Smith voluntarily resigned from the medical staff of Cleburne County Hospital and, likewise, the absence of evidence that the medical staff, Hospital Board, or other Hospital representatives deliberately made conditions so intolerable that Dr. Smith could not stay. The appellate court also specifically reversed the District Court as to its First Amendment findings. The Court of Appeals noted that the inquiry as to whether speech is constitutionally protected is a question of law (not subject to the clearly erroneous standard) and held that the District Court failed to take into account that Dr. Smith's complaints evolved into vindictive personal attacks designed to disrupt the functioning of the Hospital rather than comments on matters of public concern. The Court of Appeals held that the District Court erred as a matter of law in automatically affording Dr. Smith's complaints the highest level of First Amendment protection just because they ostensibly concerned

the public motive of quality care at the county-operated hospital and by not recognizing that they had degenerated into destructive personal attacks disrupting the operation and efficiency of the Hospital.

This case was correctly decided by the Eighth Circuit Court of Appeals and the appropriate standard of review was used. The rules of law applicable to the case, particularly as to the First Amendment analysis, have been rather fully explored by this Court in several landmark cases. See, e.g., *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983); *Mt. Healthy City School Dist. Board of Education v. Doyle*, 429 U.S. 274 (1977). A review of this case would not materially advance the development of that area of the law as there are no gaping holes left from prior decisions which are presented here. Dr. Smith does not even allege, nor could he, that this case presents an issue on which considerable conflict and difference of opinion exists among the circuits or other lower courts for which further guidance would be beneficial. In fact, the circuits are in agreement. See, *Patkus v. Sangamon-Cass Consortium*, 769 F.2d 1251 (7th Cir. 1985); *Davis v. West Community Hosp.*, 755 F.2d 455 (5th Cir. 1985); *Jurgensen v. Fairfax County, Va.*, 745 F.2d 868 (4th Cir. 1984); *Satterwhite v. Smith*, 744 F.2d 1380 (9th Cir. 1984) (constructive discharge). Further review and holdings in this case would in all likelihood only affect these litigants rather than allowing this Court to provide needed guidance in an important and unsettled area. The questions presented in this case were not particularly novel so as to offer the Court an opportunity to address an important new twist of widespread interest. Rather, the issue was whether the applicable law was

applied to the facts of this case and a correct result reached. A critical examination reveals that all Dr. Smith is even colorably seeking here is for this Court to review and reverse what he believes to be an erroneous decision by the Eighth Circuit. Surely Dr. Smith is not seriously alleging that the appellate court elected to apply a different standard of review from that mandated by Rule 52 and relevant case law just because it did not cite the rule by number and use the words "clearly erroneous". The Eighth Circuit Court of Appeals knows the standard of review, as evidenced by many prior cases where the court has quoted and applied it, and the court applied that standard here. An issue deserving of this Court's limited time and resources is not presented here. This case simply involves one man who is dissatisfied with the results because the appellate court came down on what he felt to be the wrong side when applying firmly established precedent to the facts of this case.

Dr. Smith, in this request for review, complains that the Eighth Circuit Court of Appeals failed to follow the clearly erroneous standard and thus give appropriate deference to the factual findings of the District Court and conclusions drawn therefrom. He does not attack the particular legal tests applied by the appellate court in handing down its ruling on the constructive discharge and First Amendment issues. The Court of Appeals admittedly did not specifically cite Rule 52 or the clearly erroneous standard of review. However, Dr. Smith's argument is merely a matter of semantics because the context of the appellate court opinion leaves no doubt as to the factual findings that the court considered necessary to a

decision in this case and the lack of appropriate consideration by the District Court of those facts which had to be the influencing factor for a decision in this case. Reversal was required so as to allow this decision to fit into firmly established precedent. In fact, some circuits have held that the issue of constructive discharge is one of law or at least a mixed question of fact and law. See *Yates v. Avco Corp.*, 819 F.2d 630 (6th Cir. 1987); *Garner v. Wal-Mart Stores, Inc.*, 807 F.2d 1536 (11th Cir. 1987). The instant brief assumes, *arguendo*, that the clearly erroneous standard is appropriate since the error of the District Court's decision is so apparent as to be unable to survive even the more restrictive review.

Rule 52 provides that, "[f]indings of fact shall not be set aside unless clearly erroneous. . . ." This Court has provided guidance on the meaning of that requirement. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564,573 (1985); *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948). The Eighth Circuit Court of Appeals applied that standard to the factual findings of the District Court as to the voluntariness of Dr. Smith's separation from the medical staff and to the applicable factual findings in the First Amendment context which did not constitute questions of law.

Several passages from the appellate court opinion are instructive in showing that the restrictive standard was applied. The Court of Appeals began its discussion of the constructive discharge issue by pointing out numerous correspondence and other writings and statements by Dr.

Smith from July 1976 through the date the medical staff issued its *recommendation* that Dr. Smith's staff privileges be *temporarily suspended* (February 1977) in which he stated that he intended to resign from the staff and stop using the Hospital. The court then noted various pieces of correspondence and committee minutes introduced into the record which indicated the Hospital Board of Governors did not accept and act on the recommendation of temporary suspension of privileges but instead considered Dr. Smith on active medical staff until he in effect removed himself from that position by failing to undertake his share of emergency room coverage, failing to attend the requisite number of staff meetings, and failing to submit a written application for written renewal of privileges, all as required by Hospital by-laws. (App. A, pp. 2-10 of Petitioner's Brief) After reviewing these relevant facts, the Court of Appeals noted that the District Court had come to the conclusion that Dr. Smith's privileges had been constructively revoked. The Court of Appeals stated, "We are unable to agree" (App. A, p. 11 of Petitioner's Brief) and then went on to state pertinent facts which could only point to the conclusion the court had reached – obviously implying the court's "definite and firm conviction that a mistake [had] been committed." The court then set forth the legal requirements, pursuant to Eighth Circuit precedent, for a plaintiff to prove constructive discharge and noted, "There is *nothing in the record* which would suggest that the Hospital tried to create intolerable working conditions in order to force Smith to quit. In fact, *it is abundantly clear* that the Hospital and its staff tried to accommodate Smith as much as possible as demonstrated in their continued efforts to

enable Smith to maintain his privileges." (Emphasis added) (App. A, p. 13 of Petitioner's Brief) To find constructive discharge on such a record is clearly erroneous under Eighth Circuit precedent. *Johnson v. Bunny Bread Co.*, 646 F.2d 1250 (8th Cir. 1986). How, other than to use the words "clearly erroneous", could the Court of Appeals have made it more evident that, upon a review of the record, it determined there was no evidence to support the District Court finding so that the court was convinced "a mistake had been committed"? Overall impression and intent, readily apparent here, is the touchstone of appropriate application of the proper standard of review, and not semantics.

Dr. Smith in his Brief cites some specific statements by fellow physicians and medical staff members which he says prove they specifically intended to make conditions intolerable. These isolated incidents and off-hand remarks pale in comparison to Dr. Smith's own written statements to his patients, constituents, the Hospital Board, and the county judge, all introduced into the record and to some extent referred to by the Court of Appeals, which were certainly the motivating factors in making working conditions at the Hospital intolerable, if in fact they were. The Eighth Circuit specifically describes certain of these more egregious statements. Dr. Smith cannot complain of intolerable conditions that he himself created and allege constructive discharge.

Dr. Smith states throughout his argument in this petition that the appellate court engaged in *de novo* review of important factual issues. This is apparently because the court failed to specify the standard of review it employed (and had employed on countless previous

occasions – see, e.g., *Cox v. Dardanelle Public School Dist.*, 790 F.2d 668,675 (8th Cir. 1968); *Roberts v. Van Buren Public Schools*, 773 F.2d 949,954 (8th Cir. 1985)) and because the court reversed the District Court. However, a review of the Court of Appeals Opinion with its specific citation of factual evidence reveals how unsupported by the evidence, and of necessity clearly erroneous, the District Court Opinion was.

The review conducted by the Court of Appeals on the First Amendment analysis is even less legally subject to challenge since key issues are questions of law, not fact, thus subject to a much less restrictive standard of review. This court in *Pickering, Mt. Healthy,* and *Connick,* set forth the parameters to be considered where, as here, a public employee is terminated from his employment after an exercise of First Amendment speech rights. Those cases teach that one does not lose First Amendment rights by accepting public employment, but by the same token, one cannot escape, by clothing oneself in the First Amendment, the consequences of intentionally disruptive and vindictive behavior, which impairs the state's interest in providing efficient service. The Court of Appeals here correctly referred to the three step analysis for determination of this issue of the propriety of terminating a government employee after his exercise of free speech rights. The steps are (1) determination of whether the speech is constitutionally protected, i.e., whether it addresses a matter of public concern (determined by considering the content, form, and context) – *Connick*, and the outcome of balancing the interests of the employee as a citizen to comment on matters of public concern and the interest of the state, as employer, in promoting the efficiency of

public services it performs through its employees – *Pickering;* (2) determination of whether the speech was a substantial or motivating factor in the adverse employment decision; and (3) determination of whether the employment action would have occurred even in the absence of the protected conduct. See, e.g., *Lewis v. Harrison School Dist. No. 1,* 805 F.2d 310,313 (8th Cir. 1986) (citing applicable Supreme Court precedent including *Pickering* and *Connick*).

As the Court of Appeals stated in its Opinion in this case, determination of whether speech is constitutionally protected is to be determined as a matter of law. *Connick v. Myers,* 461 U.S. 138,148, n. 7 (1983). The court was thus not bound by the clearly erroneous standard. "[I]n cases raising First Amendment issues, we have repeatedly held that an appellate court has an obligation to 'make an independent examination of the whole record' . . . " *Bose Corp. v. Consumers Union of U.S., Inc.,* 466 U.S. 485,499 (1984). "Rule 52(a) does not inhibit an appellate court's power to correct errors of law . . . " *Id.* at 501. The Eighth Circuit Court of Appeals, in conducting its required independent review of this question of law, held that the record, when reviewed in its entirety, showed Dr. Smith's criticism went beyond protected speech and became only caustic personal attacks which disrupted the public service provided by the Hospital. The court noted that the District Court was correct that some of Dr. Smith's complaints were on matters of public concern; however, the lower court stopped there, *assuming* constitutional protection rather than viewing the cumulative effect. The appellate court also held that the District Court committed a mistake in ruling that the remaining steps of the test used

in this First Amendment analysis favored Dr. Smith. In part, those errors were based on the District Court's erroneous conclusion on the initial question of law. The Court of Appeals cited the medical staff resolution itself (Appendix A) and the reasons stated on its face as the basis for the recommendation of temporary suspension of Dr. Smith's privileges as the real motivating factor in the employment decision as opposed to protected First Amendment activities. The Eighth Circuit, in considering the correctness of the District Court's conclusion on the third step (would the Hospital have denied privileges absent First Amendment activities) noted the applicability of the *Pickering* balance, again a legal question, and the overwhelming evidence in the record of the vindictive and personal nature of Dr. Smith's attacks and the apparent disruptive effect on the efficiency of the Hospital and found no support for the lower court's ruling.

CONCLUSION

The Court of Appeals reversed the District Court on nearly every important factual and legal finding. While the appellate court did not specifically state the factual findings were "clearly erroneous" and "a mistake", it did refer to specific evidence in the record, apparently ignored or misconstrued by the District Court, which could lead to no other conclusion than that Dr. Smith voluntarily resigned his staff position and the Hospital and its staff did not act in retaliation to Dr. Smith's public criticisms. Further, the appellate court was faced with a question of law – whether Dr. Smith's speech was constitutionally protected – on which it conducted an independent review and held the District Court's conclusion to be unsupported by applicable legal precedent.

This matter has been correctly determined and no further review is necessary or appropriate. The case simply involves the application of well established precedent to the facts of this case. The decision does not present new or novel twists nor raise an issue on which lower courts and future litigants need guidance. No conflict is alleged nor existing among lower courts as to the applicable rules of law or application thereof. The case was correctly decided applying correct legal standards. Thus, Dr. Smith's request for a Writ of Certiorari must be denied.

Respectfully submitted,

MICHAEL E. HALE
(Counsel of Record)
GAIL K. PONDER
BARBER, MCCASKILL, AMSLER,
JONES & HALE, P.A.
1200 Union National Plaza
124 West Capitol Avenue
Little Rock, AR 72201
(501) 372-6175

Attorneys for Respondent
Cleburne County Hospital

WALTER A. PAULSON II
(Counsel of Record)
FRIDAY, ELDREDGE & CLARK
2000 First Commercial Building
Little Rock, Arkansas 72201
(501) 376-2011

Attorneys for Respondents
Physicians

APPENDIX A

BUSINESS MINUTES Date February 22, 1977

The Cleburne County Hospital Medical Staff met in a called meeting at 5:30 P.M., Tuesday, February 22, 1977, in the hospital conference room.

Attending were Drs. D. H. McClanahan, R. L. Clark, J. B. Scruggs, M. E. Barnett, W. M. Wells, R. R. Wilson, Max Baldridge, N. L. Poff, H. L. Cranford, and H. C. Williams; and Billie Thurman, A.R.T. Director of Medical Records.

Due to Dr. Smith's absence from the meeting, the recording secretary attempted to locate him at his home, office, and on his beeper to remind him of the meeting of which his office had been informed Friday, February 18, 1977 per the usual channels. The meeting was called for 5:30 P.M., however in deference to Dr. Smith's not being at the meeting at that time, the business at hand was not started until 6:15 P.M.

At that time Dr. Wells called the meeting to order with the following statement:

> "This meeting was called expressly to consider Dr. Smith's allegations regarding the hospital.
>
> The Medical Staff feels that it is unnecessary for the content of this meeting to be made public, and all of us will make every attempt to keep it private.
>
> We should like to begin the meeting with the reading of the following concensus statement:"

The following statement was given to and read by Mrs. Thurman:

"Dr. Smith, the purpose of this meeting is two-fold. The first is to again express to you the disagreement of the staff with your contention that poor medical care is rendered in this hospital, and with your open attack on various individuals associated with the hospital. Your grumblings, as we recall, began some three or four years ago, and consisted for the most part of occasional disagreements with Mr. Barker, who was then administrator of the hospital, and certain individuals on the nursing staff. Since then, you have gradually and sometimes rather explosively expanded the objects of your attack to include the County Judge, the Hospital Administrator, the Board of Directors, the Medical Staff and the Nursing Staff. We choose not to reflect upon the actions of the current County Judge, since he has been in office only slightly more than one month. However, we do feel that the Board of Directors, wholly and as individuals, have done the very best they could with the welfare of the hospital in mind. The Hospital Administrator, although many of us had our doubts at the time of his being hired by the Board, has worked extremely hard and accomplished a great deal in terms of getting the hospital on its feet, from a financial point of view. He, together with the governing Board, has accomplished this in the face of an open attack, which has unquestionably brought the hospital monetary damages during the last few months. The Nursing Staff in this hospital, we believe, consists of individuals with as near an ideal combination of professionalism and neighborly compassion as could be found anywhere. Some problems of morale do exist, but are, with only one or two exceptions, the direct result of criticism levied publicly at them and primarily by you in spite of their attempts to continue to provide good nursing care.

> Now, the second objective of this meeting is for the Medical Staff to respond to your criticism of and recommendations to us. Your implications that this Medical Staff operates deceivingly and wholly for self-interest exceeds the bounds of ethical behavior. We disagree with you that overall poor patient care is found in our hospital, and we emphatically disagree that the Medical Staff itself is substandard. We accept our responsibility as a Medical Staff to ensure that adequate health care is avaliable in our community through the Cleburne County Hospital, and feel that the following recommendation is therefore in order. Many times in recent weeks you have suggested that if the findings of an investigation into the overall functioning of the hospital does not bear out your allegations, then you yourself are the problem at the hospital, and should be removed. We, the Medical Staff, feel that such investigations have been carried out, and that there has been no basis for your claims uncovered. We, therefore, recommend to the Board of Governors that your staff privileges be temporarily suspended. We further intend to ask for consultation from the Ethics Committee of the Arkansas Medical Society. We further plan to request, if possible, a Peer Review of all physicians practicing in this hospital which could result in further recommendations to the Board of Governors."

Dr. Baldridge made a motion to adopt the recommendations as was read to present to the Board of Governors. Dr. McClanahan seconded the motion. Adopted by a unanimous voiced vote. There were no opposing votes.

Dr. Barnett made a motion that a copy of the concensus statement be given to Dr. Smith by hand at the earliest possible date. Dr. Baldridge seconded the motion. This was accepted by a unanimous vote.

A motion to adjourn at 6:30 P.M. was made by Dr. Scruggs and seconded by Dr. Baldridge. Voted and passed. Meeting adjourned.

Respectfully submitted,

/s/ Harrol Crawford

(PX 126)